

Senate Bill No. 365

Passed the Senate September 8, 2005

Secretary of the Senate

Passed the Assembly September 8, 2005

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2005, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to repeal and add Section 6307 of the Public Resources Code, relating to tidelands and submerged lands, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 365, Ducheny. Tidelands and submerged lands.

(1) Existing law authorizes the State Lands Commission, whenever it appears to the commission to be in the best interests of the state, for the improvement of navigation, to aid in reclamation, for flood control protection, or to enhance the configuration of the shoreline, and that it will not substantially interfere with the right of navigation and fishing in the waters involved, to exchange filled or unfilled lands of equal value, as specified. Existing law provides that the lands exchanged may be released from the public trust for navigation and fishing, as specified.

This bill, instead, would allow the commission to enter into an exchange, with any person or any private or public entity, of filled or reclaimed tidelands and submerged lands or beds of navigable waterways, or interests in those lands, if the commission finds that specified conditions are met.

(2) This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Section 25 of Article I and Sections 3 and 4 of Article X of the California Constitution were adopted to protect and promote public access to the state's waterways.

(b) The state's sovereign interests in tidelands, submerged lands, and the beds of nontidal navigable waters, whether filled or unfilled, are entrusted to the State Lands Commission to be protected as public trust lands pursuant to the California Constitution and the common law public trust doctrine.

(c) As trustee of public trust lands, the commission has a duty to protect and promote the public's access to and use of these lands for trust purposes, including commerce, navigation, and fishing.

(d) As trustee of public trust lands, the commission also has a duty to protect and promote other public trust values, such as preserving waterways and adjacent lands in their natural state as open space and as environments that provide food and habitat for wildlife.

(e) Since 1850, many of the lands in and along the state's waterways have been altered by natural or human actions changing the location of the waterways and their shorelines. Thus, in some areas current conditions no longer reflect the ownership and boundaries of the waterways and adjacent uplands, leaving parcels of land with little or no utility for public trust purposes, while other lands can be used more effectively for public trust purposes.

(f) Waterways and lands nearby are often subject to unresolved boundary and title issues that impair the use of public lands for public trust purposes and burden other lands with a cloud on the title.

(g) In certain cases, and with appropriate findings, it will further public trust purposes to acquire lands not currently subject to the public trust or to settle title to lands subject to conflicting title claims.

(h) To provide the commission with the necessary authority to address these situations and continue to implement the authority set forth in Division 7 (commencing with Section 8600) of the Public Resources Code, without resort to protracted and costly litigation, and to promote public trust values and uses and public access to the state's waterways, the Legislature finds it necessary to reenact Section 6307 of the Public Resources Code as provided in Section 3 of this act.

SEC. 2. Section 6307 of the Public Resources Code is repealed.

SEC. 3. Section 6307 is added to the Public Resources Code, to read:

6307. (a) The commission may enter into an exchange, with any person or any private or public entity, of filled or reclaimed tide and submerged lands or beds of navigable waterways, or

interests in these lands, that are subject to the public trust for commerce, navigation, and fisheries, for other lands or interests in lands, if the commission finds that all of the following conditions are met:

(1) The exchange is for one or more of the purposes listed in subdivision (c).

(2) The lands or interests in lands to be acquired in the exchange will provide a significant benefit to the public trust.

(3) The exchange does not substantially interfere with public rights of navigation and fishing.

(4) The monetary value of the lands or interests in lands received by the trust in exchange is equal to or greater than that of the lands or interests in lands given by the trust in exchange.

(5) The lands or interest in lands given in exchange have been cut off from water access and no longer are in fact tidelands or submerged lands or navigable waterways, by virtue of having been filled or reclaimed, and are relatively useless for public trust purposes.

(6) The exchange is in the best interests of the state.

(b) Pursuant to an exchange agreement, the commission may free the lands or interest in lands given in exchange from the public trust and shall impose the public trust on the lands or interests in lands received in exchange.

(c) An exchange made by the commission pursuant to subdivision (a) shall be for one or more of the following purposes, as determined by the commission:

(1) To improve navigation or waterways.

(2) To aid in reclamation or flood control.

(3) To enhance the physical configuration of the shoreline or trust land ownership.

(4) To enhance public access to or along the water.

(5) To enhance waterfront and nearshore development or redevelopment for public trust purposes.

(6) To preserve, enhance, or create wetlands, riparian or littoral habitat, or open space.

(7) To resolve boundary or title disputes.

(d) The commission may release the mineral rights in the lands or interests in lands given in exchange if it obtains the mineral rights in the lands or interests in lands received in exchange.

(e) The grantee of any lands or interests in lands given in exchange may bring a quiet title action under Chapter 7 (commencing with Section 6461) of Part 1 of Division 6 of this code or Chapter 4 (commencing with Section 760.010) of Title 10 of Part 2 of the Code of Civil Procedure.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to recognize the benefits to the public trust from enhancing the configuration of public ownership of and the improvement of public access to and along the shoreline for public trust uses, and to clarify the authority of the State Lands Commission to conduct exchanges involving major projects throughout the state, some of which involve hazardous waste sites, that could otherwise be mired in costly and protracted litigation or otherwise delayed, it is necessary that this act take effect immediately.

Approved _____, 2005

Governor